

SUBCHAPTER A : GENERAL PROVISIONS

§334.1. Purpose and Applicability.

(a) Purpose. The purposes of this chapter are to:

(1) provide a comprehensive regulatory program for underground storage tank systems storing hazardous substances and petroleum substances, and for aboveground storage tanks storing certain petroleum products, as prescribed by Texas Water Code, Chapter 26, Subchapter I;

(2) establish minimum standards and procedures to reasonably protect and maintain the quality of the state's groundwater and surface water resources from environmental contamination that could result from any releases of harmful substances stored in such tanks;

(3) provide for the use of risk-based corrective action; and

(4) generally provide for the protection of human health and safety, as well as the protection of the overall environment of the state.

(b) Applicability to underground storage tanks.

(1) An underground storage tank system shall be subject to all or part of the applicable regulations in this chapter only when such system:

(A) meets the definition of “underground storage tank system” under §334.2 of this title (relating to Definitions);

(B) contains, has contained, or will contain a “regulated substance” as defined under §334.2 of this title (relating to Definitions);

(C) is not completely exempted from regulation, under §334.3(a) of this title (relating to Statutory Exemptions); and

(D) is not completely excluded from regulation under §334.4(a) of this title (relating to Commission Exclusions).

(2) The applicable requirements and provisions in this chapter shall apply to regulated underground storage tank systems (as described in paragraph (1) of this subsection), and to the registration, design, construction, installation, operation, testing, maintenance, upgrading, recordkeeping, reporting, removal from service, release monitoring, release reporting and corrective action, fee assessment, financial assurance, and other applicable requirements associated with such systems, as more fully described in this chapter.

(3) The applicable requirements and provisions in this chapter shall apply equally to all owners and operators of regulated underground storage tank systems (as described in paragraph (1) of this subsection), including individuals, trusts, firms, joint-stock companies, corporations, governmental corporations, partnerships, associations (including non-profit and charity organizations), states, municipalities, commissions, political subdivisions of a state, interstate bodies, consortiums, joint ventures, commercial and non-commercial entities, and the United States Government (including all of its departments), except as otherwise provided in this chapter.

(4) The following types of underground tank systems shall be subject to all or parts of the applicable regulations in this chapter if they meet the general qualifications for an underground storage tank system in paragraph (1) of this subsection:

(A) compartmental tanks, when at least one of the compartments is used to store regulated substances; and

(B) dual-use or multiple-use tanks which alternately store two or more substances, when at least one of the stored substances is a regulated substance.

(c) Applicability to aboveground storage.

(1) An aboveground storage tank shall be subject to the applicable regulations in this chapter only when such tank;

(A) meets the definition of “aboveground storage tank” in §334.122 of this title (relating to Definitions for ASTs);

(B) contains, has contained, or will contain a “petroleum product” as defined in §334.122 of this title (relating to Definitions for ASTs);

(C) is not exempted from regulation in §334.123 of this title (relating to Statutory Exemptions for ASTs); and

(D) is not excluded from regulation in §334.124 of this title (relating to Commission Exclusions for ASTs).

(2) The applicable requirements and provisions in this chapter shall apply to regulated aboveground storage tanks, and to the registration, installation notification, reporting, recordkeeping, release reporting and corrective action, fee assessment, and other applicable requirements associated with such tanks, as more fully described in this chapter.

(3) The applicable requirements and provisions in this chapter shall apply equally to all owners and operators of regulated aboveground storage tanks, including individuals, trusts, firms, joint-stock companies, corporations, governmental corporations, partnerships, associations (including non-

profit and charity organizations), states, municipalities, commissions, political subdivisions of a state, interstate bodies, consortiums, joint ventures, commercial and non-commercial entities, and the United States Government (including all of its departments), except as otherwise provided in this chapter.

(4) The following types of aboveground tanks shall be subject to the applicable regulations in this chapter if they meet the general qualifications for an aboveground storage tank in paragraph (1) of this subsection:

(A) compartmental tanks, when at least one of the compartments is used to store petroleum products; and

(B) dual-use or multiple-use tanks which alternately store two or more substances when at least one of the stored substances is a petroleum product;

(5) If a storage tank containing a petroleum product technically meets the definitions of both an aboveground storage tank and an underground storage tank under this chapter, then the tank will be considered an underground storage tank, and must conform with all applicable requirements for underground storage tanks in this chapter.

(6) Consistent with the statutory exemption for heating oil tanks in §334.123(a)(2) of this title (relating to Statutory Exemptions for ASTs), an aboveground storage tank storing a petroleum product (such as kerosene or diesel) which is primarily used as a heating oil substitute for heating purposes on the premises where stored, and which is secondarily used as a motor fuel for the operation of internal combustion engines, shall be exempt from the regulations of this chapter.

(d) Applicability of specific sections to underground storage tanks and aboveground storage tanks.

(1) Underground storage tanks shall be subject to the provisions of the following sections in this chapter:

(A) Subchapter A of this title (relating to General Provisions);

(B) Subchapter B of this title (relating to Underground Storage Tank Fees);

(C) Subchapter C of this title (relating to Technical Standards);

(D) Subchapter D of this title (relating to Release Reporting and Corrective Action);

(E) Subchapter E of this title (relating to Financial Responsibility);

(F) Subchapter H of this title (relating to Interim Reimbursement Program);
and

(G) Subchapter I of this title (relating to Underground Storage Tank Contractor Certification and Installer Licensing).

(2) Aboveground storage tanks shall be subject to the provisions of the following sections in this chapter:

(A) §334.1 of this title (relating to Purpose and Applicability), and §334.2 of this title (relating to Definitions);

(B) Subchapter D of this title (relating to Release Reporting and Corrective Action);

(C) Subchapter F of this title (relating to Aboveground Storage Tanks); and

(D) Subchapter H of this title (relating to Interim Reimbursement Program).

Adopted October 11, 1995

Effective November 8, 1995

§334.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Abandonment in-place - A method of permanent removal of an underground storage tank from service where the tank is left in the ground after appropriate preparation and filling with an acceptable solid inert material.

Aboveground release - Any release to the surface of the land or to surface water, including, but not limited to, releases from the aboveground portion of an underground storage tank system and releases associated with overfills and transfer operations during the dispensing, delivering, or removal of regulated substances into or out of an underground storage tank system.

Accidental release - Any sudden or nonsudden release of a petroleum substance from an underground storage tank that results in a need for corrective action and/or compensation for bodily injury or property damage neither expected nor intended by the tank owner or operator.

ACT - The Association for Composite Tanks.

Allowable cost - As defined by Subchapter H, §334.308 of this title (relating to Interim Reimbursement Program).

Ancillary equipment - Any devices that are used to distribute, meter, or control the flow of petroleum substances or hazardous substances into or out of an underground storage tank, including, but not limited to, piping, fittings, flanges, valves, and pumps.

ANSI - American National Standards Institute.

API - American Petroleum Institute.

Appropriate district office - The commission's district field office which has jurisdiction for conducting authorized commission regulatory activities in the area where a particular UST system is located.

ASTM - American Society of Testing and Materials.

Below-ground release - Any release to the subsurface of the land or to groundwater, including, but not limited to, releases from the below-ground portions of an underground storage tank system and releases associated with overfills and transfer operations during the dispensing, delivering, or removal of regulated substances into or out of an underground storage tank system.

Beneath the surface of the ground - Beneath the ground surface or otherwise covered with materials so that visual inspection is precluded.

Bodily injury - The meaning given to this term by applicable Texas law; however, this term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for bodily injury.

Bulk storage tank - An underground storage tank having a capacity of 20,000 gallons or more.

Cathodic protection - A technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell, normally by means of either the attachment of galvanic anodes or the application of impressed current.

CERCLA - The federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.

Change-in-service - A method of permanent removal from service involving the permanent conversion of a regulated underground storage tank to a tank which is not regulated under this chapter, where all regulated substances are properly removed by emptying and cleaning, and the tank is left in the ground for the storage of materials other than regulated substances.

Closure letter - A letter issued by the commission to the owner or operator which states that based on the information available, the commission agrees that the owner or operator has completed the corrective action requirements for the referenced release in accordance with commission requirements.

Commission - Texas Natural Resource Conservation Commission, or its predecessor or successor agencies, as applicable.

Composite tank - A single-wall or double-wall steel tank, to which an external fiberglass-reinforced plastic laminate or cladding has been factory-applied.

Consumptive use - (With respect to heating oil) the utilization and consumption of heating oil on the premises where stored.

Controlling interest - Direct ownership of at least 50% of the voting stock of another entity.

Corporate fiduciary - An entity chartered by the Banking Department of Texas, the Savings and Loan Department of Texas, the United States comptroller of the currency, or the director of the United States Office of Thrift Supervision that acts as a receiver, conservator, guardian, executor, administrator, trustee, or fiduciary of real or personal property.

Corrosion specialist - A person who, by reason of a thorough knowledge of the physical sciences and the principals of engineering and mathematics acquired by a professional education and

related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks, and who is either:

(A) certified as a “corrosion specialist” or a “cathodic protection specialist” by the National Association of Corrosion Engineers; or

(B) licensed as a professional engineer by the Texas State Board of Registration for Professional Engineers in a branch of engineering that includes education and experience in corrosion control of buried or submerged metal piping systems and metal tanks.

Corrosion technician - A person who can demonstrate an understanding of the principals of soil resistivity, stray current, structure-to-soil potential, and component electrical isolation measurements as relate to corrosion protection and control on buried or submerged metal tanks and metal piping systems; who is qualified by appropriate training and experience to engage in the practice of inspection and testing for corrosion protection and control on such systems, including the inspection and testing of all common types of cathodic protection systems; and who either:

(A) has been certified by the National Association of Corrosion Engineers (NACE) as a corrosion technician, corrosion technologist, or senior corrosion technologist;

(B) is employed under the direct supervision of a corrosion specialist (as defined in this section), where the corrosion specialist maintains responsible control and oversight over all corrosion testing and inspection activities;

(C) has been officially qualified as a “cathodic protection tester,” in strict accordance with the assessment and examination procedures prescribed by NACE; or

(D) can otherwise demonstrate at least an equivalent level of proficiency, training, and experience as required for personnel meeting the requirements of subparagraphs (A), (B), or (C) of this definition.

Cost-effective work - Work of a type which is both effective in achieving the desired remediation result, and which of alternative types of effective work, is the least costly.

Date installation is complete - The date any regulated substance is initially placed in an underground storage tank or the date any petroleum product is initially placed in an aboveground storage tank.

Dielectric material - A material that does not conduct direct electrical current, as related to coatings, bushings, and other equipment and materials used with underground storage tank systems.

Electrical equipment - Underground equipment which contains dielectric fluid which is necessary for the operation of equipment such as transformers and buried electrical cable.

Emergency generator - A standby electrical generating system powered by an internal combustion engine (including a turbine), where such system is designed to supply temporary electrical service only when service from the normal or primary electrical source is disrupted. Such systems shall include, but are not necessarily limited to, those providing emergency electrical service for hospitals, life support systems, and other medical service facilities; telephone and electrical utilities; heating, lighting, ventilation, security, elevator, fire control, and other essential building operations systems; uninterruptible power systems; essential air conditioning and refrigeration; and motors, machinery, and controls used for other essential or critical purposes.

EPA - The federal Environmental Protection Agency.

Excavation zone - The space containing the underground storage tank system and backfill material, which is bounded by the ground surface and the walls and floor of the pit and trenches into which the underground storage tank system is placed at the time of installation.

Executive director - The executive director of the commission.

Existing UST system - An underground storage tank system which is used or designed to contain an accumulation of regulated substances for which installation either has commenced prior to December 22, 1988, or has been completed on or prior to December 22, 1988. Installation will be considered to have commenced if the owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction at the site or installation of the tank system, and if either a continuous on-site physical construction or installation program has begun or the owner or operator has entered into contractual obligations (which cannot be cancelled or modified without substantial loss) which require that the physical construction at the site or installation of the tank system is to be completed within a reasonable time.

External release detection - A method of release detection which includes equipment or procedures designed to effectively monitor or measure for the presence of regulated substances in the excavation zone, soil, or other media outside of a single-wall or double-wall underground storage tank system.

Facility - The site, tract, or other defined area where one or more underground storage tank systems are located, and which includes all adjoining contiguous land and associated improvements.

Facility owner - Any person who currently holds legal possession or ownership of a total or partial interest in an underground storage tank facility. (The facility owner and the owner associated with an underground storage tank system may be the same person or may be different persons, depending on the specific arrangements at the facility.)

Farm - A tract or tracts of land (including all associated structures and improvements) which are principally devoted to the raising of agricultural or other types of crops, domestic or other types of animals, or fish for the production of food, fiber, or other products or for other useful purposes, including fish hatcheries, rangeland, and plant nurseries with growing operations, but not including timber-growing land and operations dedicated primarily to recreational, aesthetic, or other non-agricultural activities (e.g., golf courses and parks).

Farm tank - A tank located on a farm where the stored regulated substance is or will be utilized directly in the farm activities.

Field-constructed tank - A tank which is principally constructed, fabricated, or assembled at the facility where the tank is to be placed into service.

Financial reporting year - The latest consecutive 12-month period for which any of the following reports used to support a financial test is prepared:

- (A) a 10-K report submitted to the federal Securities and Exchange Commission;
- (B) an annual report of tangible net worth submitted to Dun and Bradstreet; or
- (C) annual reports submitted to the Energy Information Administration or the Rural Electrification Administration. Thus, this term may comprise a fiscal or a calendar year period.

Flow-through process tank - A tank through which regulated substances flow in a steady, variable, recurring, or intermittent manner during, and as an integral part of, a production process (such as petroleum refining, chemical production, and industrial manufacturing), but specifically not

including any tank used for the static storage of regulated substances prior to their introduction into the production process and any tank used for the static storage of regulated substances which are products or by-products of the production process.

Free-product - A regulated substance in its free-flowing non-aqueous liquid phase at standard conditions of temperature and pressure (e.g., liquid not dissolved in water).

Gathering lines - Any pipeline, equipment, facility, or building used in the transportation of oil or gas during oil or gas production or gathering operations.

Hazardous substance - Any substance defined or listed in the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), §101(14) (42 United States Code §9601, et seq.), and which is not regulated as a hazardous waste under the federal Solid Waste Disposal Act, Subtitle C (42 United States Code §6921, et seq.).

Hazardous substance UST system - An underground storage tank system that contains an accumulation of either a hazardous substance, a mixture of two or more hazardous substances, or a mixture of one or more petroleum substances with one or more hazardous substances; and which does not meet the definition of a petroleum UST system in this section.

Heating oil - A petroleum substance which is typically used in the operation of heating, boiler, or furnace equipment and which either is one of the following seven technical grades of fuel oil: Number 1, Number 2, Number 4-light, Number 4-heavy, Number 5-light, Number 5-heavy, and Number 6; is a residual fuel oil derivative of the refining process (such as "Navy Special" and "Bunker C" residual fuel oils); or is another fuel (such as kerosene or diesel) used for heating purposes as a substitute for one of the above fuel oils or residual fuel oil derivatives.

Hydraulic lift tank - A tank holding hydraulic fluid for a closed-loop mechanical system that uses compressed air and hydraulic fluid to operate lifts, elevators, and other similar devices.

Impressed current system - A method of cathodic protection where a rectifier is used to convert alternating current to direct current, where the current then flows in a controlled electrically-connected circuit to non-sacrificial anodes, then through the surrounding soil or backfill to the protected metallic structure or component, and back to the rectifier.

In operation - The description of an in-service underground storage tank which is currently being used on a regular basis for its intended purpose.

In service - The status of an underground storage tank beginning at the time that regulated substances are first placed into the tank and continuing until the tank is permanently removed from service by means of either removal from the ground, abandonment in-place, or change-in-service. (An in-service UST may or may not contain regulated substances, and may be either in operation or out of operation at any specific time.)

Installer - A person who participates in or supervises the installation, repair, or removal of underground storage tanks.

Inventory control - Techniques used to identify a loss of product that are based on volumetric measurements in the tank and reconciliation of those measurements with product delivery and withdrawal records.

Legal defense cost - Any expense that an owner or operator or provider of financial assurance incurs in defending against claims or actions brought:

(A) by EPA or the state to require corrective action or to recover the costs of corrective action;

(B) by or on behalf of a third party for bodily injury or property damage caused by an accidental release; or

(C) by any person to enforce the terms of a financial assurance mechanism.

Lender - A state or national bank; a savings bank; a state or federal savings and loan association; a state or federal government agency that customarily provides financing; or an entity that is registered with the Office of Consumer Credit Commissioner pursuant to Chapter 7, Title 79, Revised Statutes (Texas Civil Statutes, Article. 5069-7.01, et seq.) if the entity is regularly engaged in the business of extending credit and if extending credit represents the majority of the entity's total business activity.

Liquid trap - A collection device (such as a sump, well cellar, and other trap) which is used in association with oil and gas production, gathering, and extraction operations (including gas production plants) for the purpose of collecting oil, water, and other liquids, and which either may temporarily collect liquids for subsequent disposition or reinjection into a production or pipeline stream, or may collect and separate liquids from a gas stream.

Maintenance - The normal and routine operational upkeep of underground storage tank systems necessary for the prevention of releases of stored regulated substances.

Monitoring well - An artificial excavation constructed to measure or monitor the quantity or movement of substances, elements, chemicals, or fluids below the surface of the ground. The term shall not include any monitoring well which is used in conjunction with the production of oil, gas, or any other minerals.

Motor fuel - A petroleum substance which is typically used for the operation of internal combustion engines (including stationary engines and engines used in transportation vehicles and marine vessels), and which is one of the following types of fuels: leaded or unleaded gasoline, aviation gasoline, Number 1 diesel fuel, Number 2 diesel fuel, and any grades of gasohol.

NACE - National Association of Corrosion Engineers.

Necessary cost - Cost of necessary work.

Necessary work/technically necessary work - Work which is required and approved by the commission to assess or remediate a leaking petroleum storage tank site.

New UST system - An underground storage tank system which is used or designed to contain an accumulation of regulated substances for which installation has commenced after December 22, 1988; or an underground storage system which is converted from the storage of materials other than regulated substances to the storage of regulated substances after December 22, 1988.

NFPA - National Fire Protection Association.

Non-commercial purposes - (With respect to motor fuel) all purposes except resale.

Noncorrodible material - A material used in the construction, maintenance, or upgrading of any component of an underground storage tank system which is designed to retain its physical and chemical properties without significant deterioration or failure for the operational life of the UST system when placed in contact with (and subjected to the resulting electrical and chemical forces associated with) any surrounding soil, backfill, or groundwater, any connected components constructed of dissimilar material, or the stored regulated substance.

Observation well - A monitoring well or other vertical tubular structure which is constructed, installed, or placed within any portion of a UST excavation zone (including the tank hole and piping trench), and which is designed or used for the observation or monitoring of groundwater, or for the observation, monitoring, recovery, or withdrawal of either released regulated substances (in liquid or vapor phase) or groundwater contaminated by such released regulated substances.

Occurrence - An accident, including continuous or repeated exposure to conditions, which results in a release from an underground storage tank. This definition is intended to assist in the understanding of the financial responsibility regulations in Subchapter E of this title (relating to Financial Responsibility), and is not intended either to limit the meaning of occurrence in a way that conflicts with standard insurance usage or to prevent the use of other standard insurance terms in place of occurrence).

On the premises where stored - (With respect to heating oil) refers to the consumptive use of heating oil on the same property or site where the heating oil is stored.

Operational life - The actual or anticipated service life of an underground storage tank system, which begins when regulated substances are first placed into the tank system and which continues until the tank system is permanently removed from service by means of either removal from the ground, abandonment in-place, or change-in-service.

Operator - Any person in control of or having responsibility for, the daily operation of an underground storage tank system.

Out of operation - The description of an in-service underground storage tank which is not currently being used on a regular basis for its intended purpose.

Overfill - A release that occurs when an underground storage tank system is filled beyond its capacity, thereby resulting in a discharge of a regulated substance to the surface or subsurface environment.

Owner - Any person who currently holds legal possession or ownership of a total or partial interest in the underground storage tank system. For the purposes of this chapter, where the actual ownership of an UST system is either uncertain, unknown, or in dispute, the fee simple owner of the surface estate where the UST is located shall be considered the UST system owner, unless the owner of the surface estate can demonstrate by appropriate documentation (deed reservation, invoice, bill of sale, etc.) or by other legally-acceptable means that the UST system is owned by others. Owner does not include a person who holds an interest in an UST system solely for financial security purposes unless, through foreclosure or other related actions, the holder of such security interest has taken legal possession of the UST system.

PEI - Petroleum Equipment Institute.

Permanent removal from service - The termination of the use and the operational life of an underground storage tank by means of either removal from the ground, abandonment in-place, or change-in-service.

Person - An individual, trust, firm, joint-stock company, corporation, government corporation, partnership, association, state, municipality, commission, political subdivision of a state, an interstate body, a consortium, joint venture, commercial entity, or the United States government.

Petroleum marketing facilities - All facilities at which a petroleum substance is produced or refined and all facilities from which a petroleum substance is sold or transferred to other petroleum substance marketers or to the public.

Petroleum marketing firms - All firms owning petroleum marketing facilities. Firms owning other types of facilities with USTs as well as petroleum marketing facilities are considered to be petroleum marketing firms.

Petroleum substance - A crude oil or any refined or unrefined fraction or derivative of crude oil which is liquid at standard conditions of temperature and pressure. For the purposes of this chapter, a "petroleum substance" shall be limited to one or a combination of the substances or mixtures in the following list (except for any listed substance regulated as a hazardous waste under the federal Solid Waste Disposal Act, Subtitle C (42 United States Code §6921, et seq.)):

(A) basic petroleum substances - crude oils, crude oil fractions, petroleum feedstocks, and petroleum fractions;

(B) motor fuels - (see definition for "motor fuel" in this section);

(C) aviation gasolines - Grade 80, Grade 100, and Grade 100-LL;

(D) aviation jet fuels - Jet A, Jet A-1, Jet B, JP-4, JP-5, and JP-8;

(E) distillate fuel oils - Number 1-D, Number 1, Number 2-D, and Number 2;

(F) residual fuel oils - Number 4-D, Number 4-light, Number 4, Number 5-light, Number 5-heavy, and Number 6;

(G) gas-turbine fuel oils - Grade O-GT, Grade 1-GT, Grade 2-GT, Grade 3-GT, and Grade 4-GT;

(H) illuminating oils - kerosene, mineral seal oil, long-time burning oils, 300 oil, and mineral colza oil;

(I) solvents - Stoddard solvent, petroleum spirits, mineral spirits, petroleum ether, varnish makers' and painters' naphthas, petroleum extender oils, and commercial hexane;

(J) lubricants - automotive and industrial lubricants;

(K) building materials - liquid asphalt and dust-laying oils;

(L) insulating and waterproofing materials - transformer oils and cable oils;

(M) used oils - (see definition for "used oil" in this section);

(N) any other petroleum-based material having physical and chemical properties similar to the above materials and receiving approval by the executive director for designation as a petroleum substance.

Petroleum UST system - An underground storage tank system that contains, has contained, or will contain a petroleum substance (as defined in this section), a mixture of two or more petroleum substances, or a mixture of one or more petroleum substances with very small amounts of one or more hazardous substances. In order for a UST system containing a mixture of petroleum substances with small amounts of hazardous substances to be classified as a petroleum UST system, the hazardous substance shall be at such a dilute concentration that the overall release detectability, effectiveness of corrective action, and toxicity of the basic petroleum substance is not altered to any significant degree.

Pipeline facilities (including gathering lines) - New and existing pipeline rights-of-way, including any equipment, facilities, or buildings therein which are used in the transportation or associated treatment (during transportation) of gas or hazardous liquids (which include petroleum and

other liquids as designated by the Secretary of the United States Department of Transportation), and which are regulated under the federal Natural Gas Pipeline Safety Act of 1968 (49 United States Code App. 1671, et seq.); the federal Hazardous Liquid Pipeline Safety Act of 1979 (49 United States Code App. 2001, et seq.); or (for intrastate pipeline facilities) the Texas Natural Resources Code, Chapters 111 or 117, or Texas Civil Statutes, Articles 6053-1 and 6053-2.

Piping - All underground pipes including valves, elbows, joints, flanges, flexible connectors, and other fittings attached to a tank system through which regulated substances flow or in which regulated substances are contained or stored.

Piping trench - The portion of the excavation zone at an underground storage tank facility which contains the piping system and associated backfill materials.

Pressurized piping - Product or delivery piping in an underground storage tank system which typically operates at greater than atmospheric pressure.

Professional engineer - An individual who is registered and duly licensed by the Texas State Board of Registration for Professional Engineers to engage in the practice of engineering in the State of Texas.

Property damage - The meaning given this term by applicable Texas law. This term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for property damage. However, such exclusions for property damage shall not include corrective action associated with releases from tanks which are covered by the policy.

Provider of financial assurance - An entity that provides financial assurance to an owner or operator of an underground storage tank through one of the mechanisms listed in Subchapter E of this chapter (relating to Financial Responsibility).

Qualified personnel - Persons who possess the appropriate competence, skills, and ability (as demonstrated by sufficient education, training, experience, and/or, when applicable, any required certification or licensing) to perform a specific activity in a timely and complete manner consistent with the applicable regulatory requirements and generally-accepted industry standards for such activity.

Radioactive materials - Radioactive substances or radioactive waste materials (e.g., high-level radioactive wastes and low-level radioactive cooling waters) which are classified as hazardous substances under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), §101(14), 42 United States Code §9601, et seq., except for radioactive materials regulated as a hazardous waste under the federal Solid Waste Disposal Act, Subtitle C, 42 United States Code §6921, et seq.

Reasonable cost - That amount or range which is commensurate with the level of corrective action necessary to assess and remediate a site, as determined by the executive director, based on an evaluation of technical effectiveness and cost effectiveness as well as typical costs expected for that particular corrective action under review, with respect to the necessary or required scope and complexity of the action. (As defined by 31 (later 30) TAC §334.309(a) of this title (relating to Allowable Costs and Restrictions on Allowable Costs-Interim Period) until that section was repealed and replaced on June 7, 1993 by the adoption of Subchapter M of this chapter (relating to Reimbursable Cost Guidelines).

Regulated substance - An element, compound, mixture, solution, or substance that, when released into the environment, may present substantial danger to the public health, welfare, or the environment. For the purposes of this chapter, a regulated substance shall be limited to any hazardous substance (as defined in this section), any petroleum substance (as defined in this section), any mixture of two or more hazardous substances and/or petroleum substances, and any other substance designated by the commission to be regulated under the provisions of this chapter.

Reimbursable cost - As defined by, Subchapter M, §334.560 of this chapter (relating to Reimbursable Cost Guidelines).

Release - Any spilling including overfills, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank into groundwater, surface water, or subsurface soils.

Release detection - The process of determining whether a release of a regulated substance has occurred from an underground storage tank system.

Repair - The restoration, renovation, or mending of a damaged or malfunctioning tank or UST system component.

Residential tank - A tank located on property used primarily for dwelling purposes.

Risk-based corrective action - Site assessment or site remediation, the timing, type, and degree of which is determined according to case-by-case consideration of actual or potential risk to public health from environmental exposure to a regulated substance released from a leaking underground or aboveground storage tank.

SARA - Superfund Amendments and Reauthorization Act of 1986.

Secondary containment - A containment method by which a secondary wall or barrier is installed around the primary storage vessel (e.g., tank or piping) in a manner designed to prevent a release from migrating beyond the secondary wall or barrier before the release can be detected. Secondary containment systems include, but are not limited to, impervious liners or vaults surrounding a primary (single-wall) tank and/or piping system, and double-wall tank and/or piping systems.

Septic tank - A water-tight covered receptacle designed to receive or process, through liquid separation or biological digestion, the sewage discharged from a building sewer.

Spill - A release of a regulated substance which results during the filling, placement, or transfer of regulated substances into a UST or during the transfer or removal of regulated substances from a UST system.

Standard conditions of temperature and pressure - A temperature of 60 degrees Fahrenheit and an atmospheric pressure of 14.7 pounds per square inch absolute.

STI - Steel Tank Institute.

Stormwater collection system - The piping, pumps, conduits, and any other equipment necessary to collect and transport surface water runoff resulting from precipitation to and from retention areas and into natural or man-made drainage channels.

Substantial business relationship - The extent of a business relationship necessary under applicable state law to make a guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued incident to that relationship if it arises from and depends on existing economic transactions between the guarantor and the owner or operator.

Suction piping - Product or delivery piping in an underground storage tank system which typically operates below atmospheric pressure.

Sump - Any man-made pit or reservoir that meets the definition of a tank (including any connected troughs or trenches) that serves to temporarily collect regulated substances.

Surface impoundment - A natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (but possibly lined with man-made materials) that is designed to hold an accumulation of regulated substances.

Tangible net worth - The tangible assets that remain after deducting liabilities; such assets do not include intangibles such as goodwill and rights to patents or royalties. For purposes of this definition, assets means all existing and all probable future economic benefits obtained or controlled by a particular entity as a result of past transactions.

Tank - A stationary device (generally exclusive of any associated ancillary equipment) designed or used to contain an accumulation of regulated substances which is constructed of a non-earthen material (e.g., concrete, steel, or plastic) that provides structural support.

Tank hole - The portion of the excavation zone at an underground storage tank facility which contains the tanks and associated backfill materials.

Tank system - An underground storage tank system.

Temporary removal from service - The procedure by which a UST system may be temporarily kept out of operation without being required to be permanently removed from service.

Tightness test (or tightness testing) - A procedure for testing and analyzing the ability of a tank or piping system to contain the stored substance, to prevent any inadvertent release of a stored substance into the environment, and to prevent the intrusion of groundwater into a tank or piping system.

TNRCC - Texas Natural Resource Conservation Commission, or commission as referenced in this chapter.

TWC - Texas Water Commission, abolished after August 31, 1993, and now refers to the Texas Natural Resource Conservation Commission (TNRCC).

UL - Underwriters Laboratories, Inc.

Underground area - An underground room, basement, cellar, shaft, or vault, which provides enough space for physical inspection of the exterior of a tank or tank system situated on or above the surface of the floor.

Underground storage tank - Any one or combination of underground tanks and any connecting underground pipes used to contain an accumulation of regulated substances, the volume of which, including the volume of the connecting underground pipes, is 10% or more beneath the surface of the ground.

Underground storage tank system - An underground storage tank, all associated piping and ancillary equipment, spill and overfill prevention equipment, release detection equipment, corrosion protection system, secondary containment equipment (as applicable), and all other related systems and equipment.

Unsaturated zone - The subsurface zone containing water under pressure less than that of the atmosphere (including water held by capillary forces within the soil) and containing air or gases generally under atmospheric pressure. This zone is bounded at the top by the ground surface and at the bottom by the upper surface of the zone of saturation (i.e., the water table).

Upgrading - The addition, improvement, retrofitting, or renovation of an existing UST system with equipment or components as required to meet the corrosion protection, spill and overflow prevention, and release detection requirements of this chapter.

Used oil - Any oil or similar petroleum substance that has been refined from crude oil, used for its designed or intended purposes, and contaminated as a result of such use by physical or chemical impurities; and including spent motor vehicle and aircraft lubricating oils (e.g., car and truck engine oil, transmission fluid, and brake fluid), spent industrial oils (e.g., compressor, turbine, bearing, hydraulic, metalworking, gear, electrical, and refrigerator oils), and spent industrial process oils.

UST - An underground storage tank (as defined in this section).

UST system - An underground storage tank system (as defined in this section).

Vent lines - All pipes including valves, elbows, joints, flanges, flexible connectors, and other fittings attached to a tank system, which are intended to convey the vapors emitted from a regulated substance stored in an underground storage tank to the atmosphere.

Wastewater collection system - The piping, pumps, conduits, and any other equipment necessary to collect and transport domestic, commercial, or industrial wastewater to and from any facilities or areas where treatment of such wastewater is designated to occur.

Wastewater treatment tank - A tank that is designed to receive and treat an influent wastewater through physical, chemical, or biological methods.

Adopted October 11, 1995

Effective November 8, 1995

§334.3. Statutory Exemptions.

(a) Complete exemption. The following underground tanks and containment devices (including any connected piping) are completely exempt from regulation under this chapter, as provided under the Texas Water Code, §26.344:

- (1) farm or residential tank with a capacity of 1,100 gallons or less used for storing motor fuel for noncommercial purposes;
- (2) tanks used for storing heating oil for consumptive use on the premises where stored;
- (3) septic tank;
- (4) surface impoundments, pits, ponds, or lagoons;
- (5) stormwater or wastewater collection systems;
- (6) flow-through process tanks;

(7) tanks, liquid traps, gathering lines, or other facilities used in connection with an activity associated with the exploration, development, or production of oil, gas, or geothermal resources, or any other activity regulated by the Railroad Commission of Texas pursuant to the Natural Resources Code, §91.101;

(8) transformers or other electrical equipment that contains a regulated substance and that is used in the transmission of electricity, to the extent that such a transformer or equipment is exempted by the United States Environmental Protection Agency under 40 Code of Federal Regulations Part 280;

(9) storage tanks located in an underground area, including a basement, cellar, mineworking, drift, shaft, or tunnel, if the storage tank is located on or above the surface of the floor;

(10) pipeline facilities, including gathering lines, if such facilities are regulated under:

(A) the Natural Gas Pipelining Safety Act of 1968 (49 United States Code, §1671, et seq.); or

(B) the Hazardous Liquid Pipeline Safety Act of 1979 (49 United States Code, §2001, et seq.).

(11) interstate pipeline facilities if such facilities are regulated under of the following state laws:

(A) the Natural Resources Code, Chapter 111;

(B) the Natural Resources Code, Chapter 117; or

(C) Texas Civil Statutes, Articles 6053-1 and 6053-2.

(b) Partial exemption. As provided under the Texas Water Code, §26.344(e), in-ground hydraulic lifts that use a compressed air/hydraulic fluid system and which hold less than 100 gallons of hydraulic oil are exempt from regulation under this chapter, except that such lifts shall remain subject to the release reporting and corrective action requirements under the Texas Water Code, §26.351, and Subchapter D of this chapter (relating to Release Reporting and Corrective Action).

§334.4. Commission Exclusions.

(a) Complete exclusions. In addition to the tanks exempted from regulation under §334.3 of this title (relating to Statutory Exemptions), the following underground storage tanks are completely excluded from regulation under this chapter by commission directive:

(1) any underground storage tank system containing a hazardous waste listed or identified under the federal Solid Waste Disposal Act, Subtitle C (42 United States Code, §6921, et seq.), or containing a mixture of such hazardous waste and other regulated substances, where such system is already subject to regulation under the federal Solid Waste Disposal Act, Subtitle C;

(2) any wastewater treatment tank (including an oil-water separator and any pretreatment facility), which is an integral part of a wastewater treatment facility which is either:

(A) permitted under the federal Clean Water Act, either §402 or §307(b) (33 United States Code §1251, et seq.); or

(B) permitted pursuant to the Texas Water Code, Chapter 26;

(3) sumps which have a capacity of less than 110 gallons;

(4) emergency spill protection or emergency overflow containment tanks, including certain sumps and secondary containment systems, which are used solely for the temporary storage or containment of regulated substances resulting from a leak, spill, overfill, or other unplanned release, and where the regulated substances are routinely removed within 48 hours of the discovery of the release; provided however, that such tanks shall be inspected for a release no less than once every month;

(5) underground storage tank systems which contain regulated substances at such dilute concentrations that any release would not pose any significant threat to human health and safety or the environment.

(b) Partial exclusions. The following underground storage tanks are subject to all provisions of this chapter, except for Subchapter C of this chapter (relating to Technical Standards), Subchapter E of this chapter (relating to Financial Responsibility), and the certification requirements of §334.8 of this title (relating to Certification):

(1) any wastewater treatment tank (including oil-water separators), where such tank is not an integral part of a wastewater treatment facility which is either:

(A) permitted under the federal Clean Water Act, either §402 or §307(b) (33 United States Code §1151, et seq.); or

(B) permitted pursuant to the Texas Water Code, Chapter 26;

(2) any underground storage tank system that contains radioactive substances, where such system is regulated by the federal Nuclear Regulatory Commission (or its successor) under the provisions of the Atomic Energy Act of 1954 (42 United States Code §2011, et seq.);

(3) any underground storage tank system that contains fuel used solely to power an emergency electrical generator system at a nuclear power generation facility regulated by the federal Nuclear Regulatory Commission (or its successor) under the provisions of Title 10 of the Code of Federal Regulations, Part 50, Appendix A.

(c) Other exclusion. In addition to the partial exemption for hydraulic lifts covered under subsection (b) of §334.3 of this title (relating to Statutory Exemptions), all other in-ground hydraulic lifts that use a compressed air/hydraulic fluid system and which hold 100 gallons or more of hydraulic oil are similarly excluded from regulation under this chapter, except that such lifts shall remain subject to the release reporting and corrective action requirements under Subchapter D of this chapter (relating to Release Reporting and Corrective Action).

§334.5. General Prohibitions.

(a) Design. On or after September 1, 1987, no person shall install or have installed an underground storage tank system for the purpose of storing or otherwise containing regulated substances unless such underground storage tank system, whether of single-wall or double-wall construction, meets the following standards.

(1) The underground storage tank system shall prevent releases due to corrosion or structural failure for the operational life of the underground storage tank system.

(2) All components of the underground storage tank system shall be either cathodically protected against corrosion, constructed of noncorrodible material, constructed of a steel material which has been clad with a noncorrodible material, or shall be otherwise designed and constructed in a manner that shall prevent the release or threatened release of any stored substances.

(3) The underground storage tank system shall be constructed of or lined with a material that is compatible with the stored substance.

(b) Delivery.

(1) Except as provided under paragraph (2) of this subsection, on or after January 1, 1990, no person shall deposit or have deposited any regulated substance into an underground storage tank system unless such system is registered with the commission under §334.7 of this title (relating to Registration). Prior to the deposit of any regulated substance into an underground storage tank, the owner or operator shall provide evidence of registration as necessary to meet the provisions of this paragraph.

(2) The prohibited delivery of regulated substances shall not be applicable to deliveries into a new or replacement UST system occurring within 30 days of the first deposit of regulated substances.

(c) Notification. No person shall perform any installation, replacement, removal, change-in-service, abandonment in-place, or any other major construction related to an underground storage tank system unless and until the commission has been provided prior notification of such activity in accordance with §334.6 of this title (relating to Construction Notification).

(d) Registration. On or after September 1, 1987, no person shall own or operate an underground storage tank which contains or has contained a regulated substance unless such underground storage tank has been properly registered with the commission in accordance with §334.7 of this title (related to Registration), except for:

(1) underground storage tanks completely exempted or partially exempted from regulation under §334.3(a) or (b) of this title (related to Statutory Exemptions);

(2) underground storage tanks completely excluded or partially excluded from regulation under §334.4(a) or (c) of this title (related to Commission Exclusions); and

(3) underground storage tanks which are permanently out of service and which either:

(A) were removed from the ground before May 8, 1986; or

(B) remain in the ground, but were emptied and cleaned on or before January 1, 1974, in accordance with accepted industry practices in effect at the time the UST was taken out of operation, and either:

(i) were filled with solid inert materials on or before January 1, 1974;

or

(ii) were not filled with solid inert materials on or before January 1, 1974, but were subsequently permanently removed from service in accordance with §334.55 of this title (relating to Permanent Removal from Service) no later than one year after the effective date of this subchapter, or within 60 days of the discovery of the UST, whichever is later.

§334.6. Construction Notification.

(a) General requirements.

(1) Beginning September 1, 1987, any person who intends either to install a new or replacement underground storage tank, to remove an underground storage tank from the ground, or to conduct a permanent abandonment in-place of an underground storage tank shall comply with the notification requirements of this section prior to initiating such activity.

(2) On or after the effective date of this subchapter, any person who intends to perform any construction activity listed in subsection (b)(1) of this section shall comply with the notification requirements of this section prior to initiating such activity.

(3) In addition to the construction notification requirements of this section, the owner or operator of an existing or proposed underground storage tank system that is located or will be located in the designated recharge zone or transition zone of the Edwards Aquifer shall also secure the requisite approval from the executive director prior to conducting certain regulated underground storage tank activities, as prescribed under Chapter 313 of this title (relating to Edwards Aquifer).

(4) Any underground storage tank construction activity performed or completed pursuant to a notification submitted under the provisions of this section shall meet the applicable technical standards and procedural requirements under Subchapter C of this chapter (relating to Technical Standards).

(5) In situations where a proposed underground storage tank construction activity is necessitated by a suspected or confirmed release of regulated substances, or where the activity contributes to or causes such a release, the owner or operator shall comply with the release reporting, investigation, and corrective action requirements of Subchapter D of this chapter (relating to Release Reporting and Corrective Action).

(6) Construction notifications required under this section may be provided to the commission's central office in Austin or to the commission's appropriate district office in the area of the activity, unless otherwise specified in this section. The official date of notification shall be the date on which the notification is first received in a commission office.

(7) Construction notification required under this section shall be provided by the owner or operator, an authorized agent or representative of the owner or operator, or the contractor or consultant retained for such construction activity. Construction notifications filed by unauthorized persons shall be null and void.

(b) Notification for major construction activities.

(1) Applicable activities.

(A) For the purposes of this section, a major underground storage tank construction activity shall include any of the following:

(i) installation of new or previously-used tank systems at a new facility, and the addition or replacement of tanks at an existing facility;

(ii) removal of existing tank systems from the ground (either temporarily or permanently);

tank systems;

- (iii) permanent abandonment in-place or change-in-service of existing

- (iv) tank repairs, including interior and exterior relining or recoating;

- (v) installation of new or replacement piping for existing tanks;

tank or piping systems;

- (vi) addition of secondary containment equipment for new or existing

- (vii) any tank integrity assessment or other activities requiring the entrance of any persons into a tank; and

- (viii) addition or replacement of any of the following items at existing facilities, when such addition or replacement is necessary for compliance with the minimum upgrading requirements in §334.47(b) of this title (relating to Technical Standards for Existing UST Systems):

- (I) cathodic protection systems;

- (II) release detection systems;

- (III) spill and overfill prevention equipment; or

- (IV) monitoring well.

(B) The requirements of this section shall not be applicable to routine and minor maintenance activities related to the tank and piping systems, such as tightening loose fittings and joints, adjusting and calibrating equipment, conducting routine inspections and tests, and the substitution or in-kind replacement of any obsolete or malfunctioning UST system component for any purpose other than required upgrading.

(2) Filing requirements. Except as provided under subsection (c) of this section, any person who intends to perform a major underground storage tank construction activity as described in paragraph (1) of this subsection shall file a written notification with the executive director at least 30 days prior to initiating the activity.

(A) Such notification should be submitted on the commission's authorized form, as described in paragraph (6) of this subsection.

(B) When requested by the executive director, any person who intends to perform a major underground storage tank construction activity shall also submit additional supporting information to assure that the construction activity is in compliance with the requirements of this

chapter. Supporting information which may be requested by the executive director includes, but shall not be limited to, the following items:

- (i) detailed design plans and specifications (drawn to scale);
- (ii) installation standards and operating instructions for major system components;
- (iii) quality assurance plans;
- (iv) compatibility data related to the stored substances and the materials of construction;
- (v) specific geological, hydrological, and environmental site information;
- (vi) qualifications and experience records of consultants, equipment installers, and contractors;
- (vii) formal plan or procedures for tank removals, changes-in-service, and abandonments in-place;
- (viii) disposal procedures for removed tanks;
- (ix) general contingency plan for release abatement and the clean-up and disposal of any residual regulated substances, contaminated soils, or contaminated water (including wash water, groundwater or surface water); and
- (x) basis and description for any proposed change-in-service.

(C) Between 24 and 72 hours prior to the scheduled time of initiation of the proposed activity, the owner shall contact the commission's appropriate district office in the area of the activity to confirm the time of the initiation of the proposed activity. Any revisions to the proposed construction start date shall be in accordance with paragraph (3) of this subsection.

(3) Rescheduling. If after the submittal of the initial construction notification, the owner determines that a revision to the previously-reported scope or start date for the construction is necessary, the owner shall immediately report the revised construction information to the commission's appropriate district office in the area of the activity.

(A) If an earlier start date is proposed, and if this date is less than 30 days from the original notification date, then the owner shall comply with the requirements of paragraph (4) of this subsection.

(B) An owner may revise the proposed construction start to a later date as necessary, provided that the commission's appropriate district office is notified, and provided that original written notifications are properly renewed upon expiration in accordance with paragraph (5) of this subsection.

(4) Waiver requests. Normally a notification period of at least 30 days shall be required prior to the initiation of any major underground storage tank construction activity. However, if after the submittal of the construction notification, the owner has good cause for an accelerated construction schedule, then the owner may request approval of an earlier construction start date. Such request shall be made directly to the commission's appropriate district office in the area of the activity. The district manager (or the manager's designated representative) shall have the authority to approve or deny such requests, and such decision shall be based on the following criteria:

(A) good cause shown by the owner for an earlier construction start date; and

(B) The ability of commission personnel to arrange and schedule an adequate inspection of the activity.

(5) Expiration. A written construction notification for a major underground storage tank construction activity shall be valid for only 180 days after the original notification date or 150 days after the originally anticipated construction start date, whichever is earlier. If the proposed construction has not commenced within this period, the original notification shall expire. If the owner still plans to perform the construction after the expiration of this period, a new and updated construction notification form shall be filed.

(6) Notification form.

(A) Any person who intends to perform a major underground storage tank construction activity (as described in paragraph (1) of this subsection) shall provide all the applicable construction notification information indicated on the commission's authorized construction notification form.

(B) The construction notification form shall be filled out as completely and accurately as possible. Upon completion, the form shall be dated and signed by the owner or the owner's designated representative, and shall be timely filed in accordance with subsection (a)(5) of this section.

(c) Alternative notification procedures.

(1) Only for underground storage tank construction activities involving situations described under paragraph (2) of this subsection, the owner may comply with the following alternative notification and reporting procedures in lieu of the normal notification requirements of subsection (b) of this section.

(A) The owner shall provide verbal or written notification to the commission as soon as possible prior to initiating the construction activity. Such notification shall be submitted directly to the commission's appropriate district office in the area of the activity.

(B) After providing the construction notification prescribed under subparagraph (A) of this paragraph, the owner may proceed with the construction activity, as directed by the district manager (or the manager's designated representative). The owner shall maintain detailed records of the construction. No later than 30 days after completion of the construction, the owner shall submit to the commission a detailed report describing the activity. If the commission determines that the information in such report is insufficient to assure compliance with the applicable requirements of this chapter, then the owner may be required to submit additional information to demonstrate such compliance.

(2) The alternative notification procedures of paragraph (1) of this subsection may be used only when the following situations occur:

(A) when an owner of an underground storage tank can demonstrate that a release or suspected release of a regulated substance has occurred or is likely to occur as a result of the operation of the underground storage tank, when such release is considered an immediate threat to human health or safety or the environment, and when the owner can demonstrate that the expeditious initiation and completion of the proposed construction activity is necessary to prevent or abate such release;

(B) when an out-of-operation underground storage tank system is discovered during unrelated construction activities (e.g., the construction of building excavations, streets, highways, utilities, etc.), when the property owner can reasonably demonstrate no prior knowledge of the existence of the tank, when the expeditious removal or abandonment in-place of the tank is considered necessary or advisable for the completion of the unrelated construction activity, and where any delays in completion of the tank removal or abandonment in-place would cause unreasonable financial hardship due to contract schedules and completion times;

(C) when any duly authorized public official (e.g., any federal, state, or local fire or safety officer, health or environmental official, law officer, etc.) orders the immediate removal or repair of all or portions of an underground storage tank system which poses an immediate threat to human health, safety, or the environment;

(D) when the activity is necessary to maintain the operational readiness of an emergency generator;

(E) in any other case where the executive director determines that compliance with the notification provisions of subsection (b) of this section would be unreasonable or impractical, or could increase the threat to human health or safety or the environment.

§334.7. Registration.

(a) General provisions.

(1) All underground storage tanks in existence on or after September 1, 1987, shall be registered with the commission on authorized commission forms, except for those tanks which:

(A) are completely exempted or partially exempted from regulation under §334.3(a) or (b) of this title (relating to Statutory Exemptions);

(B) are completely excluded or partially excluded from regulation under §334.4(a) or (c) of this title (relating to Commission Exclusions);

(C) were properly registered with the commission prior to the effective date of this subchapter under the provisions of the federal Solid Waste Disposal Act, §9002 (42 United States Code §6921, et seq.), provided that the owner has submitted notice of all changes and additional information in accordance with the provisions of subsection (d) of this section;

(D) have been permanently removed from service and which either:

(i) were permanently removed from the ground before May 8, 1986; or

(ii) remain in the ground, but were emptied, cleaned, and filled with solid inert materials on or before January 1, 1974, in accordance with accepted industry practices in effect at the time the UST was taken out of operation;

(E) were out of operation and empty of regulated substances at the time of their discovery, provided that:

(i) the facility owner can reasonably demonstrate no prior knowledge of the existence of the USTs; and

(ii) the USTs are permanently removed from service in accordance with §334.55 of this title (relating to Permanent Removal from Service) no later than September 29, 1990, or within 60 days of their discovery, whichever is later.

(2) The owner of an underground storage tank shall be responsible for compliance with the tank registration requirements of this section. An owner may designate an authorized representative to complete and submit the required registration information. However, the owner shall be held responsible for compliance with the provisions of this section by such representatives.

(3) All underground storage tanks subject to the registration requirements of this section shall also be subject to the fee provisions of Subchapter B of this chapter (relating to

Underground Storage Tank Fees), except where specifically exempted in this chapter. The failure by a tank owner to properly register any tanks shall not exempt the owner from such fee assessment and payment provisions.

(b) Existing tanks. Any person who owns an underground storage tank that was in existence on September 1, 1987, shall register such tank with the commission not later than September 1, 1987, on an authorized commission form, except for those tanks exempted and excluded under §334.7(a)(1)(A)-(D) of this section.

(c) New or replacement tanks. Any person who owns a new or replacement underground storage tank that is placed into service on or after September 1, 1987, must register the tank with the executive director on an authorized commission form within 30 days after the date any regulated substance is placed into the tank, except for those tanks exempted or excluded under §334.7(a)(1)(A)-(D) of this section.

(d) Changes or additional information.

(1) The owner of an underground storage tank system shall provide written notice to the executive director of any changes or additional information concerning such system. Types of changes or additional information subject to this requirement shall include, but shall not necessarily be limited to, the following:

(A) change in ownership, or change in ownership information (e.g., mailing address and/or telephone number);

(B) change in the operational status of each tank system (e.g., in service, temporarily out of service, removed from the ground, or permanently abandoned in-place);

(C) change in the type of stored regulated substance, or change-in-service to provide for the storage of a substance other than a regulated substance;

(D) installation of additional tanks and ancillary equipment at an existing facility;

(E) change in the type of piping for an existing tank;

(F) the addition of, or a change in the type of, internal or external corrosion protection for the tanks, piping, and/or ancillary equipment;

(G) the addition of, or a change in the type of, spill and overfill prevention equipment for the tanks;

(H) the addition of, or a change in the type of, release detection equipment or methods for the tanks and/or piping;

(I) change in the location of documents and records for the facility; and

(J) change in financial responsibility information related to the facility.

(2) Notice of any change or additional information shall be submitted on an authorized commission registration form which has been completed in accordance with subsection (e) of this section. The commission's underground storage tank facility number for the facility shall be included in the appropriate space on the registration form.

(3) Notice of any change or additional information shall be filed with the executive director within 30 days from the date of the occurrence of the change or addition, or within 30 days from the date on which the owner or operator first became aware of the change or addition, as applicable.

(e) Registration form.

(1) Any tank owner required to submit tank registration information under subsections (a)-(d) of this section shall provide all the information indicated on the commission's authorized registration form for each regulated tank owned.

(2) The tank registration form shall be filled out as completely and accurately as possible. Upon completion, the form shall be dated and signed by the owner or the owner's designated representative, and shall be filed with the executive director within the specified time frames.

(3) All tank owners required to submit tank registration information under subsections (a)-(d) of this section shall provide the registration information for all tanks located at a particular facility on the same registration form.

(4) Tank owners who own tanks located at more than one facility shall complete and file a separate registration form for each facility.

(5) If additional information, drawings, or other documents are submitted with new or revised registration data, specific facility identification information (including the facility identification number, if known) shall be conspicuously indicated on each document and all such documents should be attached to and filed with the registration form.

(f) Inadequate information. When any of the required tank registration information submitted to the commission is determined to be inaccurate, unclear, illegible, incomplete, or otherwise inadequate, the executive director may require the owner to submit additional information. An owner shall submit any such required additional information within 30 days of receipt of such request.

(g) Registration requirements as a condition for reimbursement. In order to be eligible for reimbursement of corrective action expenses, the eligibility requirements relating to registration, as provided in §334.310 of this title (relating to Requirements for Eligibility) must be met.

Adopted October 11, 1995

Effective November 8, 1995

§334.8. Certification.

(a) Installation certifications. The following installation certifications are required.

(1) Owner or operator certifications. Any owner or operator who installs a new or replacement underground storage tank system after the effective date of this subchapter, shall assure that all applicable parts of the construction certification section of the commission's authorized tank registration form are completed. The owner or operator shall further certify by signature that:

(A) the installation meets the requirements of §334.45 of this title (relating to Technical Standards for New UST Systems), and §334.46 of this title (relating to Installation Standards for New UST Systems);

(B) the corrosion protection system meets the requirements of §334.49 of this title (relating to Corrosion Protection); and

(C) the release detection equipment or procedures meet the requirements of §334.50 of this title (relating to Release Detection).

(2) Certification by installer. After the effective date of this subchapter, any installer who is employed or otherwise engaged by an underground storage tank owner or operator to install or replace an underground storage tank system shall also certify by signature that the installation methods are in compliance with §334.46 of this title (related to Installation Standards for New UST Systems). The tank owner or operator shall be responsible for assuring that the installer has provided the certification required in this paragraph.

(3) Filing requirements. The installation or replacement certification information required under paragraphs (1) and (2) of this subsection shall be included in the appropriate sections of the commission's authorized tank registration form, and shall be filed with the commission in accordance with the applicable tank registration time limits prescribed under §334.7 of this title (relating to Registration).

(b) Financial responsibility certification.

(1) Beginning on the effective date of this subchapter, all owners and operators of new and existing underground storage tank systems shall assure that the applicable parts of the financial responsibility section of the commission's authorized tank registration form are completed, and shall

certify by signature that the financial responsibility requirements under Subchapter E of this chapter (relating to Financial Responsibility) have been met.

(2) The required financial responsibility information shall be included in the appropriate section of the commission's authorized tank registration form, and shall be filed with the commission as follows.

(A) For new UST systems, the financial responsibility information shall be filed with the commission in accordance with the tank registration time limits prescribed under §334.7 of this title (relating to Registration).

(B) For existing UST systems, the financial responsibility information shall be filed with the commission within 30 days of the prescribed date that financial responsibility is required pursuant to §334.92 of this title (relating to Compliance Dates).

§334.9. Seller's Disclosure.

Effective on and after the effective date of this subchapter, any person who sells or otherwise legally conveys a tank (or tank system) which is designed or intended to be installed as an underground storage tank shall provide the purchaser (or grantee) with written notification of a tank owner's obligations relative to the commission's tank registration and construction notification provisions under §334.7 of this title (relating to Registration) and §334.6 of this title (relating to Construction Notification).

(1) The written notification shall include the names and addresses of the seller (or grantor) and the purchaser (or grantee), the number of tanks involved, a description of each tank (capacity, tank material, and product stored, if applicable), and the commission's designated facility identification number (if the entire facility is being conveyed).

(2) This notification requirement shall apply to any transfers or conveyances of a new or used tank from one person to another person, and shall also apply to the sales of real property where underground storage tanks are located.

(3) The written notification shall be provided by the seller (or grantor) to the purchaser (or grantee) prior to the actual conveyance of the tanks, or prior to the time of the real property closing, as applicable.

(4) For the purpose of fulfilling the disclosure requirements of this section, the following language is deemed sufficient: "The underground storage tank(s) which are included in this conveyance are presumed to be regulated by the Texas Water Commission and may be subject to certain registration and construction notification requirements found in 31 Texas Administrative Code, Chapter 334."

§334.10. Reporting and Recordkeeping.

(a) Reporting. Owners and operators of UST systems shall assure that all reporting and filing requirements in this chapter are met, including the following (as applicable):

(1) construction notification, in accordance with §334.6 of this title (relating to Construction Notification);

(2) application for approval of any proposed UST system in the Edwards Aquifer recharge or transition zones, in accordance with §334.6(a)(2) of this title (relating to Construction Notification) and Chapter 313 of this title (relating to Edwards Aquifer);

(3) registration of UST systems and changes in information, in accordance with §334.7 of this title (relating to Registration);

(4) certification of installations and financial responsibility, in accordance with §334.8 of this title (relating to Certification);

(5) request for approval of any variance or alternative procedure, in accordance with §334.43 of this title (relating to Variances and Alternative Procedures);

(6) request for extension of time for an UST system that is temporarily out of service, in accordance §334.54(d)(2) of this title (relating to Temporary Removal from Service);

(7) documentation of release determination or site assessment conducted when an UST system is permanently removed from service, in accordance with §334.55(a)(6) of this title (relating to Permanent Removal from Service);

(8) payment of underground storage tank fees, in accordance with Subchapter B of this chapter (relating to Underground Storage Tank Fees);

(9) reports, plans, and certifications related to suspected and confirmed releases of regulated substances, including:

(A) release reports and notifications, in accordance with §334.72 of this title (relating to Reporting of Suspected Releases), §334.75 of this title (relating to Reporting and Cleanup of Surface Spills and Overfills) and §334.76 of this title (relating to Initial Response to Releases);

(B) report and certification of site check methods, in accordance with §334.74(c) of this title (relating to Release Investigation and Confirmation Steps);

(C) initial abatement report, in accordance with §334.77(b) of this title (relating to Initial Abatement Measures and Site Check);

(D) initial site characterization report, in accordance with §334.78(b) of this title (relating to Initial Site Characterization);

(E) free product removal report, in accordance with §334.79(d) of this title (relating to Free Product Removal);

(F) soil and groundwater contamination information, in accordance with §334.80(b) of this title (relating to Investigation for Soil and Groundwater Cleanup);

(G) corrective action plan, in accordance with §334.81 of this title (relating to Corrective Action Plan);

(H) notification of cleanup initiation, in accordance with §334.81(e) of this title (relating to Corrective Action Plan);

(I) certification of compliance with corrective action plan, in accordance with §334.81(g) of this title (relating to Corrective Action Plan); and

(J) public notices related to corrective action plans, in accordance with §334.82(b) of this title (relating to Public Participation);

(10) notifications and reports relating to financial responsibility requirements, including:

(A) reports of financial condition, in accordance with §334.95(f) of this title (relating to Financial Test of Self-Insurance);

(B) notification of failure to secure alternate financial assurance, in accordance with §334.95(g) of this title (relating to Financial Test of Self-Insurance), §334.103(b) of this title (relating to Cancellation or Nonrenewal by a Provider of Financial Assurance), and §334.108(c) of this title (relating to Bankruptcy or Other Incapacity of Owner or Operator or Provider of Financial Assurance);

(C) request for release of excess guaranteed funds, in accordance with §334.100(d)-(f) of this title (relating to Trust Fund);

(D) forms and reports regarding financial responsibility, in accordance with §334.104 of this title (relating to Reporting by Owner or Operator); and

(E) notification of related bankruptcy proceedings, in accordance with §334.108(a) of this title (relating to Bankruptcy or Other Incapacity of Owner or Operator or Provider of Financial Assurance); and

(11) any other reports, filings, notifications, or other submittals required by this chapter, or otherwise required by the executive director or commission to demonstrate compliance with the provisions of this chapter.

(b) Recordkeeping.

(1) General recordkeeping requirements.

(A) Owners and operators of UST systems shall be responsible for developing and maintaining all records required by the provisions of this chapter.

(B) Except as provided in subparagraphs (C) and (D) of this paragraph, legible copies of all required records pertaining to an UST system shall be maintained in a secure location on the premises of the UST facility, shall be immediately accessible for reference and use by the UST system operator, and shall be immediately available for inspection upon request by commission personnel.

(C) In the event that copies of the required records cannot reasonably be maintained on the premises of the UST facility, then such records may be maintained at a readily-accessible alternate site, provided that the following conditions are met.

(i) If the UST system is in operation, the records shall be readily accessible for reference and use by the UST system operator.

(ii) The records shall be readily accessible and available for inspection upon request by commission personnel.

(iii) The owner or operator shall provide the following information (in writing) to the executive director and to the commission's appropriate district office:

(I) the specific location where the required records are maintained; and

(II) the name, address, and telephone number of the authorized custodian of such records.

(iv) The filing of the written information required in clause (iii) of this subparagraph shall be accomplished no later than 30 days after the effective date of this chapter, 30 days after a UST installation or replacement has been completed, or 30 days after the UST records are moved to an alternate site, whichever is later or applicable.

(D) For UST systems which have been permanently removed from service in accordance with the applicable provisions of §334.55 of this title (relating to Permanent Removal from

Service), the facility owner may submit the appropriate records required by this chapter to the executive director in lieu of maintaining the records on the premises or at an alternative site, provided that the following conditions are met:

(i) the facility is no longer operated in a manner that requires the underground storage of regulated substances, and all UST systems at the facility have been permanently removed from service;

(ii) the facility owner shall provide written justification adequate to explain why such records cannot be maintained on the premises of the UST facility or at a readily-accessible alternative site; and

(iii) the records shall be submitted at one time in one package for each UST facility, and the records shall be appropriately labeled with the UST facility location information and the UST facility identification number.

(2) Required records and documents. Owners and operators of UST systems shall assure that all recordkeeping requirements in this chapter are met, including the following records and documentation (as applicable).

(A) Legible copies of the following general records shall be maintained for the operational life of the UST system:

(i) original and amended registration documents, in accordance with §337.7 of this title (relating to Registration);

(ii) original and amended certifications for UST installations and financial responsibility, in accordance with §334.8 of this title (relating to Certification);

(iii) notification to UST purchaser, in accordance with §334.9 of this title (relating to Seller's Disclosure).

(B) Legible copies of applicable records and documents related to technical standards for UST systems shall be maintained in accordance with the following provisions:

(i) application documents and executive director's approval letter for any variances or alternative procedures, in accordance with §334.43 of this title (relating to Variances and Alternative Procedures);

(ii) records demonstrating compliance with technical standards and installation standards for new UST systems, in accordance with §334.45(f) of this title (relating to Technical Standards for New UST Systems) and §334.46(i) of this title (relating to Installation Standards for New UST Systems);

(iii) records demonstrating compliance with the minimum upgrading requirements for existing UST systems, in accordance with §334.47(d) of this title (relating to Technical Standards for Existing UST Systems);

(iv) operation and maintenance records, in accordance with §334.48(g) of this title (relating to General Operating and Management Requirements);

(v) corrosion protection records, in accordance with §334.49(e) of this title (relating to Corrosion Protection);

(vi) release detection records, in accordance with §334.50(e) of this title (relating to Release Detection);

(vii) spill and overfill control records, in accordance with §334.51(c) of this title (relating to Spill and Overfill Prevention and Control);

(viii) records for repairs and relining of a UST system, in accordance with §334.52(d) of this title (relating to UST System Repairs and Relining);

(ix) records for reuse of used tanks, in accordance with §334.53(c) of this title (relating to Reuse of Used Tanks);

(x) records for temporary removal of UST systems from service, in accordance with §334.54(f)(4) of this title (relating to Temporary Removal from Service);

(xi) records for permanent removal of UST systems from service, in accordance with §334.55(f) of this title (relating to Permanent Removal from Service);

(C) Legible copies of all required financial assurance records shall be maintained in accordance with the applicable provisions of §334.105 of this title (relating to Financial Assurance Recordkeeping).

§334.11. Enforcement.

(a) Further action. If an investigation, review, or inspection by commission personnel does not sufficiently demonstrate that the installation, operation, maintenance, corrective action, or any other regulated activities related to an UST or AST system are in accordance with the applicable requirements of this chapter, the executive director may take one or more of the following actions.

(1) The executive director may require the owner or operator to submit additional documentation and data to adequately demonstrate compliance with the applicable provisions of this chapter.

(2) The executive director may require the owner or operator to conduct additional activities to achieve compliance with this chapter, including additions, revisions, or modifications to the system, monitoring and testing for releases, and corrective action.

(3) The executive director may initiate formal enforcement action and may seek administrative penalties, as prescribed under Chapter 337 of this title (relating to Enforcement).

(b) Commission orders. The commission may issue orders to enforce the provisions of this chapter in accordance with the procedures applicable to orders issued under the Texas Water Code, §26.019.

(c) Additional enforcement provisions.

(1) Enforcement of financial assurance requirements for petroleum UST systems.

(A) The commission may impose administrative and civil penalties on owners or operators of underground storage tanks containing petroleum substances if acceptable evidence of financial responsibility is not maintained.

(B) On and after September 1, 1995, in accordance with the provisions of Texas Water Code, §26.352(f), the commission may:

(i) seek injunctive relief in the district courts of Travis County to force the temporary or permanent closure of an underground storage tank for which the owner or operator does not maintain acceptable financial assurance; and

(ii) seek criminal prosecution in accordance with the provisions of Texas Water Code, Chapter 26, Subchapter F, if the owner or operator of an underground storage tank knowingly operates such tank without acceptable evidence of financial responsibility.

(2) Enforcement of technical standards for UST systems.

(A) The commission may impose administrative and civil penalties on owners or operators of underground storage tank systems if such systems are not in timely compliance with the provisions of Subchapter C of this chapter (relating to Technical Standards for USTs).

(B) On and after September 1, 1995, in accordance with the provisions of Texas Water Code, §26.3475(e), the commission may order an owner or operator to shut down or remove from service an underground storage tank system if the owner or operator fails, within 30 days after the date the commission's notice of violation is received, to correct any noncompliance with the commission's regulatory requirements in Subchapter C of this chapter (relating to Technical Standards) for:

- (i) release detection for pressurized piping;
- (ii) release detection for suction piping;
- (iii) release detection for tanks;
- (iv) spill containment and overfill prevention for tanks; and
- (v) tank integrity assessment and corrosion protection for tanks, piping, and other UST system components.

(3) Enforcement related to actions, activities, and services conducted by persons other than owners or operators.

(A) Corrective action services.

(i) Except as provided in clause (ii) of this subparagraph, any person who performs, contracts to perform, participates in, or supervises corrective action activities in a manner that violates any applicable provisions of this chapter shall be subject to appropriate enforcement actions, sanctions, and penalties, as provided in Texas Water Code, §26.3573(i).

(ii) A professional engineer who is currently registered with the State Board of Registration for Professional Engineers, and who is properly registered as a “corrective action project manager” in accordance with the applicable requirements of Subchapter J of this chapter (relating to Registration of Corrective Action Specialists and Project Managers for Product Storage Tank Remediation Projects) shall be subject only to the disciplinary procedures adopted by the Texas State Board of Registration for Professional Engineers relative to any violations of the commission's requirements for corrective action activities which involve the “practice of engineering”, as defined in the Texas Engineering Practices Act, Texas Civil Statutes, Article 3271a, as amended, or which meet the definition of “engineering” in the rules of the Texas State Board of Registration for Professional Engineers (22 TAC §§131.1 et seq.), or which are otherwise within the statutory or regulatory jurisdiction of the Texas State Board of Registration for Professional Engineers. A registered professional engineer who is responsible for any other violations of commission requirements in this chapter shall remain subject to all other applicable enforcement actions, sanctions, and penalties by the commission, as authorized under applicable law.

(I) When the commission determines that an alleged violation of the provisions of this chapter related to corrective action activities has been made by a properly-registered “corrective action project manager” who is also licensed as a professional engineer by the Texas State Board of Registration for Professional Engineers, the commission shall refer the matter to the Texas State Board of Registration for Professional Engineers for appropriate disciplinary actions, enforcement, sanctions, or penalties, as applicable.

(II) If the Texas State Board of Registration for Professional Engineers fails or refuses to take any disciplinary or enforcement actions due to a lack of statutory or regulatory authority or jurisdiction, or for any other reason, the commission shall reserve the authority to pursue all appropriate enforcement actions, sanctions, and or penalties, in accordance with applicable law and rules.

(B) UST installation, repair, and removal services.

(i) In accordance with the provisions of Texas Water Code, §26.459 and §26.460, any person or business entity who violates the applicable provisions of Texas Water Code, Subchapter K, or Subchapter I, concerning Underground Storage Tank Contractor Registration and Installer Licensing), is guilty of a Class A misdemeanor, and shall be subject to the following sanctions and enforcement actions, as applicable:

(I) administrative penalties not to exceed \$10,000 per day for each day a violation continues, in accordance with Texas Water Code, §26.136;

(II) civil penalties not to exceed \$2,500 for each day of violation;

(III) any associated criminal penalties prescribed by law as applicable to Class A misdemeanors; and

(IV) if applicable, denial, suspension, or revocation of any license or certificate of registration issued pursuant to Texas Water Code, Chapter 26, Subchapter K or Subchapter I of this title (relating to Underground Storage Tank Contractor Registration and Installer Licensing).

(ii) The enforcement provisions in this paragraph are applicable only to offenses or violations committed on or after September 1, 1995. Any offense or violation committed before September 1, 1995, shall be subject to the statutory and regulatory provisions for enforcement actions, sanctions, and penalties in effect when the offense or violation was committed.

(C) Actions, activities, and services conducted by any other person or business entity.

(i) Any person or business entity who violates any of the provisions of Texas Water Code, Subchapter I, or the provisions of this chapter is subject to administrative penalties not to exceed \$10,000 per day for each day a violation continues.

(ii) The enforcement provisions in this paragraph are applicable only to offenses or violations committed on or after September 1, 1995. Any offense or violation committed

before September 1, 1995, shall be subject to the statutory and regulatory provisions for enforcement actions, sanctions, and penalties in effect when the offense or violation was committed.

Adopted October 11, 1995

Effective November 8, 1995

§334.12. Other General Provisions.

(a) Other regulations.

(1) Except as provided in paragraph (2) of this subsection, compliance with the provisions of this chapter by an owner or operator of an underground storage tank system or aboveground storage tank system shall not relieve such owner or operator from the responsibility of compliance with any other regulations directly and/or indirectly affecting such tanks and the stored regulated substances, including, but not necessarily limited to, all applicable regulations legally promulgated by the United States Environmental Protection Agency, United States Occupational Safety and Health Administration, United States Department of Transportation, United States Nuclear Regulatory Commission, United States Department of Energy, Texas Department of Health, State Board of Insurance, Texas Commission on Fire Protection, Railroad Commission of Texas, Texas Department of Agriculture, State Comptroller, Texas Department of Public Safety, Texas Natural Resource Conservation Commission, and any other federal, state, and local governmental agencies or entities having appropriate jurisdiction.

(2) As provided in Texas Water Code §26.359, this chapter establishes a unified statewide program for underground and surface water protection, and any local regulation or ordinance is effective only to the extent the regulation or ordinance does not conflict with the standards adopted for the design, construction, installation, or operation of underground storage tanks under this chapter.

(b) Owner and operator responsibility.

(1) Except as otherwise provided in paragraphs (2), (3), and (4) of this subsection, the owners and operators of underground storage tank systems and aboveground storage tank systems subject to the provisions of this chapter shall be responsible for ensuring compliance with all applicable provisions of this chapter. Owners and operators are responsible for any violations or noncompliant activities resulting from the actions or inactions by any installer, contractor, operator, or other person who is employed or otherwise engaged by an owner or operator of an underground storage tank or aboveground storage tank to be principally in charge of any activities or procedures required under this chapter.

(2) Unless otherwise specified under Texas Water Code, §26.3513, on and after September 1, 1995, when the owner of a petroleum storage tank system can reasonably demonstrate to the satisfaction of the commission that such owner is not in day-to-day control of such system, the commission shall consider the person who is in day-to-day control of such system at a site that is in violation of this chapter to be the:

(A) person primarily responsible for taking corrective action, for corrective action costs, for receiving a notice of violation, or for paying a penalty assessed; and

(B) primary subject of an enforcement action or order under this chapter.

(3) The liability of certain lenders as owners or operators of underground storage tanks and aboveground storage tanks is conditionally and specifically limited, in accordance with the provisions and conditions of §334.15 of this title (relating to Limits on Liability of Lender).

(4) The liability of certain corporate fiduciaries as owners or operators of underground storage tanks and aboveground storage tanks is conditionally and specifically limited, in accordance with the provisions and conditions of §334.16 of this title (relating to Limits on Liability of Corporate Fiduciary).

(c) Inspections, monitoring, and testing.

(1) For the purposes of developing or assisting in the development of any regulation, conducting any study, or enforcing this chapter, an owner and/or operator of an underground storage tank or aboveground storage tank, on the request of the commission or the executive director, shall:

(A) furnish information relating to the tank, including tank equipment and contents; and

(B) permit a designated agent or employee of the commission at all reasonable times to have access to and to copy all records relating to the tanks.

(2) For the purposes of developing or assisting in the development of a regulation, conducting a study, or enforcing the provisions of this chapter, the commission, its designated agent, or employee may:

(A) enter at reasonable times an establishment or place in which an underground storage tank or aboveground storage tank is located;

(B) inspect and obtain samples of a regulated substance contained in the tank from any person; and

(C) conduct monitoring or testing of the tanks, associated equipment, contents, or surrounding soils, air, surface water, or groundwater.

(3) The commission may order an owner or operator of an underground storage tank or aboveground storage tank to conduct monitoring and testing if the commission determines that there is reasonable cause to believe that a release has occurred in the area in which the underground storage tank or aboveground storage tank is located.

(4) Each inspection made under this section must be begun and completed with reasonable promptness. Before a designated agent or employee of the commission enters private property to carry out a function authorized under this section, the agent or employee must give reasonable notice and exhibit proper identification to the manager or owner of the property or to another appropriate person. The commission's designated agent or employee must observe the regulations of the establishment being inspected, including regulations regarding safety, internal security, and fire protection.

Adopted October 11, 1995

Effective November 8, 1995

§334.14. Memorandum of Understanding Between the Attorney General of Texas and the Texas Natural Resource Conservation Commission.

(a) Applicability. This MOU applies to civil enforcement proceedings and complaints filed on storage tanks subject to this chapter. Pursuant to the Texas Water Code, §5.104, the Texas Natural Resource Conservation Commission adopts a MOU between the Texas Natural Resource Conservation Commission (TNRCC) and the Attorney General of Texas. The MOU contains the TNRCC's and the Attorney General's interpretation concerning intervention in the civil enforcement process under the Texas Water Code. This section applies as follows.

(1) The Texas Water Commission (now the Texas Natural Resource Conservation Commission, TNRCC) was designated as the state agency for the regulation of underground storage tanks by enactment of Senate Bill 779 of the 70th Texas Legislature, 1987.

(2) The Texas Water Code authorizes the Texas Natural Resource Conservation Commission to have instituted civil suits for injunctive relief and the assessment and recovery of a civil penalty, whenever it appears that a person has violated, or is violating or threatening to violate, any provision of the Texas Water Code, or of any rule, permit, or other order of the Texas Natural Resource Conservation Commission.

(3) The Texas Water Code provides that at the request of the executive director of the Texas Natural Resource Conservation Commission, the Attorney General of Texas shall institute and conduct a suit in the name of the State of Texas for injunctive relief or to recover a civil penalty, or for both injunctive relief and penalty.

(4) Federal regulations promulgated by the United States Environmental Protection Agency pursuant to the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976, Subtitle I, require that any state agency administering the Underground Storage Tank Program authorized under that act provide for public participation in the state enforcement process.

(5) All citizen complaints filed, either orally or in writing, that relate to underground storage tanks will be investigated timely and thoroughly by the Texas Natural Resource Conservation

Commission. Citizen complaint responses will be first initiated by attempting to establish telephone contact with the complainant within 48 hours of receipt of the complaint, and concurrently beginning whatever records review is necessary. Upon completion of the investigation, the complainant will be informed in writing of the results. In addition, the complainant will be apprised of the ultimate resolution of the problem. The executive director of the Texas Natural Resource Conservation Commission shall keep a complaint file in accordance with §337.4 of this title (relating to Enforcement).

(6) Notice of proposed settlements of civil enforcement actions that relate to underground storage tanks will be published by the attorney general of Texas in the Texas Register (except where immediate action is necessary to adequately protect human health and the environment) and that opportunity will be provided for the public to comment on such proposed settlements.

(7) Nothing in this agreement shall be construed to limit or impair the attorney general's right to control and direct litigation on behalf of the state.

(8) The attorney general will not oppose intervention where permissive intervention may be authorized by statute, rule, or regulation into any civil suit involving the State of Texas relating to violations of the Underground Storage Tank Program by any citizen having an interest which is or may be adversely affected.

(9) The attorney general, on behalf of the State of Texas, will consent to a proposed judgment in an action to enjoin violations of the Underground Storage Tank Program only after the publication of notice which provides at least 30 days for public comment on the proposed judgment prior to its entry by the court, provided that the attorney general may permit an exception to the 30-day comment period if a settlement or judgment is required to avoid delays that would adversely affect public health or the environment.

(b) Execution by all signatories. After execution by all signatories, this agreement shall remain in effect until rescinded by formal action of either agency.

(c) Effective date. The effective date of the memorandum of understanding is the effective date of this rule adoption.

§334.15. Limits on Liability of Lender.

(a) A lender, as defined in §334.2 of this title (relating to Definitions), is not liable as an owner or operator under this chapter solely because the lender holds indicia of ownership to protect a security or lienhold interest in property. A lender is not liable under this subsection if:

(1) such lender has a security interest in a personal property or in a fixture that is not attached to the real estate or a lienhold interest on the real estate or fixture that is attached to the real estate as security for a loan to finance the acquisition or development of property, to finance the

removal, repair, replacement, or upgrading of a regulated tank, or to finance the performance of corrective action in response to a release of a regulated substance from a tank, and the security or lienhold interest is in:

(A) an underground or aboveground storage tank;

(B) real property on which an underground or aboveground storage tank is located; or

(C) in any other personal property attached to or located on property on which an underground or aboveground storage tank is located; or

(2) the real or personal property described in paragraph (1) (A)-(C) of this subsection constitutes collateral for a commercial loan.

(b) A lender that exercises control over property described under subsection (a) of this section before foreclosure to preserve the collateral or to retain revenues from the property for the payment of debt, or that otherwise exercises the control of a mortgagee in possession, is not liable as an owner or operator under this chapter unless that control leads to action that the executive director finds is causing or exacerbating contamination associated with the release of a regulated substance from a tank located on the property.

(c) A lender that has a bona fide security or lienhold interest in any real or personal property as described under subsection (a) of this section and that forecloses on or receives an assignment or deed in lieu of foreclosure and becomes the owner of that real or personal property is not liable as an owner or operator under this chapter if the lender:

(1) removes from service any underground or aboveground storage tanks on the property. A tank is removed from service when the actions defined in §334.55(b) of this title (relating to Permanent Removal from Service) have been properly completed;

(2) undertakes, and with due diligence in a timely and persistent manner completes, corrective action in response to any release from those tanks. A lender acts with due diligence when the lender executes the corrective action in conformance with Subchapter D of this chapter (relating to Release Reporting and Corrective Action), or as otherwise directed by the executive director; and

(3) performs the removal and corrective action in accordance with all applicable commission rules.

(d) A lender acting under subsection (c) of this section must begin removal of the tank from service or corrective action within 90 days after the date on which the lender becomes the owner of the property.

(e) A lender described by subsection (a) of this section which forecloses on or receives an assignment or deed in lieu of foreclosure on real or personal property described in subsection (a) of this section is not liable as an owner or operator under this chapter because the lender sells, re-leases, liquidates, or winds up operations and takes measures to preserve, protect, or prepare a secured aboveground or underground storage tank before sale or other disposition of the storage tank or the property if the lender:

(1) did not participate in the management of an aboveground or underground storage tank or real or personal property described by subsection (a) of this section before foreclosure or its equivalent on the storage tank or the property; and

(2) establishes, as provided by subsection (f) of this section, that the ownership indicia maintained after foreclosure continue to be held primarily to protect a security interest.

(f) A lender may establish that the ownership indicia maintained after foreclosure continues to be held primarily to protect a security interest if, within 12 months after foreclosure, the lender:

(1) lists the aboveground or underground storage tank, or the facility or property on which the tank is located, with a broker, dealer, or agent who deals in that type of property; or

(2) advertises the aboveground or underground storage tank for sale or other disposition, at least monthly, in:

(A) a real estate publication;

(B) a trade or other publication appropriate for the aboveground or underground storage tank being advertised; or

(C) a newspaper of general circulation in the area in which the aboveground or underground storage tank is located.

(g) For purposes of subsections (f) and (h) of this section the 12-month period begins:

(1) when the lender acquires good and indefeasible title, if the lender, after the expiration of any redemption period or other waiting period required by law, was acting diligently to acquire such title; or

(2) on the date of foreclosure or its equivalent, if the lender does not act diligently to acquire good and indefeasible title.

(h) A lender that meets the conditions of subsection (f) of this section nonetheless becomes liable as owner and/or operator at the end of the 12-month period, or when the lender no longer holds ownership indicia primarily to protect its security interest, whichever occurs first. If a lender outbids,

rejects, or does not act on an offer of fair consideration for the aboveground or underground storage tank or the facility or property on which the storage tank is located, it is presumed that the lender is not holding the ownership indicia primarily to protect the security interest unless the lender is required, in order to avoid liability under federal or state law, to make the higher bid, obtain the higher offer, or seek or obtain an offer in a different manner.

Adopted October 11, 1995

Effective November 8, 1995

§334.16. Limits on Liability of Corporate Fiduciary.

(a) A corporate fiduciary or its agent(s) is not liable in an individual capacity as an owner or operator under this chapter solely because:

(1) the corporate fiduciary or its agent has legal title to real or personal property for purposes of administering a trust or estate of which the property is a part; or

(2) the corporate fiduciary or its agent does not have legal title to the real or personal property but operates or manages the property under the terms of an estate or trust of which the property is a part.

(b) Subsection (a) of this section does not relieve a trust, estate, or beneficiary of any liability the trust, estate, or beneficiary may have as an owner or operator under this chapter.

Adopted October 11, 1995

Effective November 8, 1995

§334.17. Privatization of Storage Tank Program.

The commission may retain agents for the performance of services related to the duties and administrative tasks of this chapter. The agent(s) shall act under the direction of the executive director.

Adopted October 11, 1995

Effective November 8, 1995

Texas Natural Resource
Conservation Commission
Chapter 334
Underground and Aboveground Storage Tanks

Page 45

Addition of (New): §§334.15-334.17
Amendment to: §§334.1, 334.2, 334.7, 334.11, 334.12
Date Adopted: October 11, 1995
Date Filed with the Secretary of State: October 18, 1995
11Date Effective: November 8, 1995